

beef has to be calculated in accordance with the provisions of Annex 3, and with these provisions alone."⁴

3. In *Korea – Various Measures on Beef*, the Panel also held that Korea had miscalculated its Current AMS for beef on the basis of a fixed external reference price for the period 1989-1991, rather than the period 1986-88, as set forth in paragraph 9 of Annex 3. Korea argued that its use of the period 1989-1991 was justified, because this period was referred to in the constituent data and methodology (used with respect to products other than beef) contained in a table of supporting material incorporated in its Schedule. The Appellate Body agreed with the Panel and recalled its findings referenced in paragraph 2 above:

"The Panel found that in both 1997 and 1998 Korea miscalculated its fixed external reference price, contrary to Article 6 and paragraph 9 of Annex 3, by using a fixed external reference price based on data for 1989-1991. Korea justifies this choice by invoking the 'constituent data and methodology' used in its Supporting Table 6 for all products other than rice, i.e., for barley, soybean, maize (corn) and rape seeds. In Supporting Table 6, all these products use the period 1989-1991 for the fixed external reference price.

We have already explained above that we share the Panel's view with respect to Korea's argument on 'constituent data and methodology' used in the table of supporting material. We agree with the Panel that, in this case, Current AMS for beef has to be calculated in accordance with Annex 3. According to Annex 3, '[t]he fixed external reference price shall be based

separate product-specific AMS, as well as any non-product specific AMS and equivalent measurements of support, using the exclusionary rules contained in Article 6.4 regarding AMS levels below the *de minimis* level and in Article 6.5 regarding direct payments under production-

undertaken sequentially. Furthermore, the concrete application of the CDM may vary depending on whether AMS or Current Total AMS is being calculated.

We generally agree with China that the calculation of Current Total AMS should be done on the basis of an approach that gives meaning to both Annex 3 and the CDM, by using a holistic approach and a harmonious interpretation of the different provisions of the Agreement on Agriculture. However, such an interpretation should not lead to a result where the textual differences in either provision are read out, without more, especially in a situation where there appear to be important differences in the manner in which AMS and Current Total AMS are to be calculated."²³

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²³ Panel Report, *China – Agricultural Producers*, paras. 7.157-7.158.